



Comptroller General
of the United States

Washington, D.C. 20548

K. Gilhooly

Decision

Matter of: Tura Machine Company

File: B-241426

Date: February 4, 1991

Stanley J. Wileczek for the protester.
Maj. William R. Medsger and Randall D. Kemplin, Esq.,
Department of the Army, for the agency.
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency need not accept a proposal of a protester, who was not an approved source for a critical flight safety part, where the agency's needs became urgent and the agency reasonably determined that it could not delay the procurement until the protester received source approval.

DECISION

Tura Machine Company protests the award of a contract to Purdy Corporation under request for proposals (RFP) No. DAAJ09-90-R-0941, issued by the Department of the Army, Aviation Systems Command, for cuff assemblies used on the UH-60 helicopter.

We deny the protest.

The cuff assembly, which connects the rotor blades to the helicopter, is designated a flight safety part because failure of a cuff assembly could result in loss of the aircraft with possible loss of life and injury to the air crew. Consequently, only sources that have obtained source approval from the U.S. Army Aviation Systems Command (AVSCOM) are considered eligible to provide the cuff assemblies.

A synopsis of the procurement, published in the June 29, 1990, Commerce Business Daily (CBD) provided that the government did not own specifications and drawings to permit full and open competition, and that approved sources were Sikorsky Aircraft, Purdy Corporation, and Fenn Manufacturing. It encouraged firms that could produce the required item to identify themselves to the contracting officer and provide supporting evidence that would permit their participation in the current or future solicitations. Tura submitted a source approval request on July 13.

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The RFP, issued on July 31, called for the production of 926 cuff assemblies and specified Sikorsky Aircraft, Purdy Corporation and Fenn Manufacturing as approved sources. It advised that offerors wishing to become approved sources should submit a source approval package to AVSCOM, and cautioned that requests for source approval would not be a cause for delay in award unless, in the government's sole judgment, substantial benefits might be obtained.

Offers were received from three approved sources and four unapproved sources, including Tura, by the RFP's August 30 closing date. An unapproved source submitted the lowest offer. Tura was second low with a per unit offer of \$4,195, and an approved source was third low with a per unit offer of \$4,199.

In response to an increase in demand for the cuff assembly as a result of Operation Desert Shield,^{1/} the RFP was amended on September 14. The amendment added a 100 percent option, reduced the delivery schedule by more than one-half, and requested best and final offers (BAFO) by September 21. Tura's BAFO was low, with a per unit price of \$3,845; Purdy, an approved source, was next low at \$4,177 per unit. The contracting officer decided that delaying award to enable Tura to become an approved source was not in the best interest of the government, and awarded a contract to Purdy on September 26.

Tura protests that AVSCOM should have awarded a contract to it, as the low offeror. Tura asserts that "normal approval" of its qualification as an approved vendor was made on September 28, and contends that the contracting officer should have expedited its source approval request (SAR) once its low offer was known so that it could receive award.

AVSCOM responds that, contrary to the protester's assertion, Tura did not become an approved source until October 30, 1990, more than a month after contract award. AVSCOM's Engineering Division sent a memorandum, dated September 28, to the Source Approval Branch of the Competition Advocacy and Spares Management Office (CASMO) stating the division's concurrence in approval of Tura's SAR. CASMO did not approve Tura as a source until October 30, after receiving the views of other AVSCOM divisions. AVSCOM further reports that in response to the contract specialist's September 19 request for a status update on Tura's SAR, the Source Approval Branch advised that Tura was not yet approved, and, if Tura's SAR were expedited,

^{1/} Operation Desert Shield was a response to the Iraqi invasion of Kuwait on August 2, 1990.

Tura might be approved by the end of the month, but no guarantees could be made. The contracting officer was also advised that the technical data package was being modified to add a fatigue testing requirement to the first article testing, that the protester would be subject to this test after being designated an approved source, and that the three presently approved sources would not be subject to the test.^{2/} The government estimated that it would take 5 to 6 weeks for an unapproved source to perform the fatigue test.

In these circumstances, AVSCOM reports, the contracting officer decided that delaying contract award to enable the protester to become an approved source was not in the government's best interest due to the urgent requirement for the part to support Operation Desert Shield.^{3/} The contracting officer awarded a contract to Purdy, the next low offeror, who was an approved source, for 926 units.^{4/}

A procuring agency may limit competition for the supply of parts if doing so is necessary to ensure the safe, dependable, and effective operation of military equipment. Under 10 U.S.C. § 2319(c)(3) (1988), a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract if the offeror can demonstrate that its product meets or can meet the approval standards before the date for award. The agency, however, is not required to delay a procurement in order to provide a potential offeror an opportunity to demonstrate its ability to become approved. 10 U.S.C. § 2319(c)(4); see Texstar, Inc., B-239905, Oct. 9, 1990, 90-2 CPD ¶ 273. Here, where AVSCOM determined to make

^{2/} The agency reports that the advice given to the contracting officer--that Purdy would not have to undergo the fatigue test--was based on the belief that Purdy had been tested when it was approved by the original equipment manufacturer. After contract award and receipt of the protest, AVSCOM learned that Purdy had not undergone a fatigue test. Since Purdy has previously manufactured the cuff assembly for AVSCOM, and its part has received years of actual use, AVSCOM allowed Purdy to begin production while undergoing fatigue testing.

^{3/} The agency reports that support for Operation Desert Shield increased the average monthly demand for the cuff assembly from 5.53 per month to 22.65 per month, resulting in the requirement for the cuff assembly becoming critically urgent. The in stock supply was reduced to 34 as of the day the protest was filed.

^{4/} The option has not been exercised and that quantity could be the subject of competition given Tura's low price and current approved status.


award because its requirements were urgent, AVSCOM's failure to delay the procurement while Tura completed source approval was not unreasonable or improper.

Although Tura contends that it would have been qualified in time to be considered for award under the RFP if AVSCOM had acted more promptly, we do not find that AVSCOM took an unreasonable amount of time to qualify Tura. The overall length of time to process Tura's SAR, which was submitted on July 13, and approved on October 30, is much shorter than the 6 months reported by AVSCOM to be the average approval time. Moreover, the internal memoranda provided by AVSCOM in its report do not show any evidence that AVSCOM was deliberately delaying the approval of Tura's SAR or otherwise acting in bad faith. Rather, the memoranda show that AVSCOM was interested in having Tura promptly qualified as another source, and that AVSCOM was concerned that it award Purdy only the minimum quantity of cuff assemblies that were needed until Tura obtained source approval. Thus, AVSCOM did not exercise the option for an additional 926 units, and requested that Tura's SAR be expedited to enhance its ability to compete for this item.

Tura maintains that it could have met the delivery schedule if AVSCOM allowed production efforts and material ordering to commence prior to first article approval with the fatigue test. Furthermore, Tura argues, even if AVSCOM did not allow acquisition of materials and production to begin prior to first article approval, it could still meet the delivery schedule for the last 463 cuff assemblies at a better price than Purdy's if AVSCOM had considered split or multiple awards.

The fact that Tura maintains that it could have met the delivery schedule for half of the parts at a lower price is irrelevant, since Tura was not a qualified source at the time award was made for this urgently needed item. See Lambda Signatics, Inc., B-239372, July 16, 1990, 90-2 CPD ¶ 37. In any event, we have previously held that even where an offeror argues that it can reduce the leadtime for first article testing, by beginning production while the item is undergoing first article evaluation, an agency is not obligated to take the risk that the offeror will not pass the first article testing and thus further delay delivery. See Rotair Indus., B-239503; B-239503.2, Aug. 24, 1990, 90-2 CPD ¶ 154.

The protest is denied.


for James F. Hinchman
General Counsel